

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST**

AMAZON WEB SERVICES, INC.,)
Plaintiff,)
v.) No. 19-1796C
THE UNITED STATES,) (Judge Patricia E. Campbell-Smith)
Defendant,)
and)
MICROSOFT CORPORATION,)
Defendant-Intervenor.)

JOINT STATUS REPORT

Pursuant to the Court's order dated January 6, 2020 (ECF No. 108), the parties respectfully provide this status report regarding the parties' access to the classified information in this case.

Both plaintiff, Amazon Web Services, Inc. (AWS), and intervenor, Microsoft Corporation, have designated one or more attorneys to review the classified portion of the administrative record in this case. The Classified Information Security Officer (CISO) appointed by the Court has confirmed that these individuals have the necessary clearances to view the classified documents.

Defendant, the United States, therefore, will file the classified portion of the administrative record with the Court's appointed CISO tomorrow.¹ Designated counsel expect to review the classified portion of the administrative record by the end of this week.

¹ The Court indicated in previous orders that the United States should not file the classified portion of the administrative record until directed by the Court. *See Order*, ECF No. 100, dated Dec. 31, 2019; *Order*, ECF No. 103, dated Jan. 3, 2020. The United States

In light of the very small amount of classified information in the administrative record, the parties agree that the schedule previously set by the Court for briefing issues related to the administrative record need not change. However, the parties now anticipate that additional matters, beyond those currently scheduled for briefing, will need to be presented to the Court in the coming weeks. Specifically, the United States and Microsoft each intend to file partial motions to dismiss that, if granted, the United States and Microsoft contend would be dispositive of the claims that form the basis of AWS's anticipated motion to supplement the record or for discovery.

Additionally, AWS intends to file a motion for temporary restraining order and/or preliminary injunction to prevent the issuance of substantive task orders under the contract, which the United States has previously advised AWS and the Court will begin on February 11, 2020, given the United States' consistent position that the services to be procured under the Contract are urgently needed in support of national security. The parties have agreed to an expedited briefing schedule on the issue of preliminary injunctive relief, and respectfully request that the Court expedite consideration of the issue, as described below.

The parties, therefore, believe that these additional motions should be briefed concurrently with the supplementation and discovery issues, and propose the following briefing schedule:

January 17, 2020

Plaintiff shall **FILE** its **motion** to supplement the administrative record and/or for discovery

understands the Court's January 6 order, in conjunction with the issuance of the Second Amended Protective Order, as leave to file the classified portion of the administrative record with the Court's appointed CISO.

January 24, 2020	Defendant and defendant-intervenor shall FILE their partial motions to dismiss
January 24, 2020	Plaintiff shall FILE its motion for a temporary restraining order and/or preliminary injunction
January 31, 2020	Defendant and defendant-intervenor shall FILE their responses to plaintiff's motion to supplement the administrative record and/or for discovery
February 3, 2020	Defendant and defendant-intervenor shall FILE their responses to the motion for temporary restraining order and/or preliminary injunction
February 7, 2020	Plaintiff shall FILE its reply in support of its motion for a temporary restraining order and/or preliminary injunction
February 7, 2020	Plaintiff shall FILE its reply in support of its motion to supplement the administrative record and/or for discovery
February 11, 2020	The Court shall ISSUE its decision on plaintiff's motion for a temporary restraining order and/or preliminary injunction
February 21, 2020	Plaintiff shall FILE its response to defendant and defendant-intervenor's partial motions to dismiss
March 6, 2020	Defendant and defendant-intervenor shall FILE their replies in support of their partial motions to dismiss

The United States and Microsoft note that, in agreeing to the above schedule for briefing of AWS's intended motion for temporary restraining order and/or preliminary injunction, they expressly reserve their right to object to the timeliness of AWS's proposed motion.

Additionally, the United States notes that, in this bid protest case, it does not intend to file an answer to AWS's complaint. Rather, the parties envision that, subsequent to the Court's resolution of the matters in the briefing discussed above, including motions under Rule 12 of the Rules of the Court of Federal Claims (RCFC), the parties will file cross-motions for judgment on

the administrative record under RCFC 52.1. Although such motions will not be filed within 60 days of the filing of AWS's complaint in this matter, the parties agree that those motions, as well as the briefing described herein, will be timely when filed if filed in accordance with the schedule issued by the Court. To the extent the Court believes further clarification is necessary, the parties respectfully request that the Court's scheduling order reflect that no answer need be filed in this case given the anticipated motions under RCFC 52.1 at a date to be determined.

Respectfully submitted,

s/ Kevin P. Mullen

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